



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MPA - 174291

PRELIMINARY RECITALS

On May 10, 2016, the above petitioner filed a hearing request under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to challenge a decision by the Division of Health Care Access and Accountability regarding Medical Assistance (MA). The hearing was held on June 21, 2016, by telephone.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly denied a request from [REDACTED] ([REDACTED]) to provide speech therapy to the Petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: OIG by Letter

Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.

2. The Petitioner is a four and half year old child with a diagnosis of autism. (Testimony of Petitioner's mother; Exhibits 2 and 4; Exhibit 3, attachment 1)
3. The Petitioner receives services through the [REDACTED] ([REDACTED]), for a total of 36 hours per week. (Testimony of [REDACTED], Petitioner's [REDACTED] treatment therapist.)
4. Petitioner's [REDACTED] treatment plan for the period of January 1, 2016 through June 30, 2016, indicated that the Petitioner had mastered following one-step verbal instructions, following three-step verbal instructions and responding appropriately when his name is called. (Exhibit 4, pgs. 10 and 11)
5. That treatment plan contained the following goals for verbal imitation:
 - a. Imitating single sounds
 - b. Imitating syllables
 - c. Imitating words
 - d. Imitating phrases and sentences.

(Exhibit 4, pg. 11)
6. That treatment plan contained the following goals for "Receptive & Expressing Language skills":
 - a. Receptively identifying groups of items when told to "touch/point to (category) – 10 items.
 - b. Receptively identifying items within a group when asked to "give me all the (category)" – 10 items.
 - c. Receptively labeling 2D actions, when asked to (touch, point, give) one item – 10 items.
 - d. Receptively labeling one action, when ask to point to it in a book – 10 items.

(Exhibit 4, pgs. 13 and 14))
7. That same treatment plan also contained goals relating to conversation skills, play skills/peer integration, verbally imitating volume, receptively and expressively labeling colors and sizes, and responding to questions such as, "Which one do you want?", "Do you want (object)/(activity) or (object)/(activity)", "What do I/you have?", "What do you see?", identifying people, identifying objects and responding appropriately in "circle time." (Id.)
8. On February 29, 2016, [REDACTED] submitted, on behalf of the Petitioner, a request to provide the Petitioner with 12 sessions of Speech therapy at a cost of \$307.75. (Exhibit 4, pg. 5)
9. The goals of the therapy requested by [REDACTED] were:
 - a. Patient will demonstrate understanding of pronouns (me, my, your) in 3/4 opportunities when given visual cues during structured play activities,
 - b. Patient will respond to speaker by looking toward speaker or verbally responding when given fading verbal and visual cues in 3/5 opportunities
 - c. Patient will verbally initiate an/or protest using an appropriate tone of voice when given verbal prompt in 3/5 opportunities
 - d. Patient will respond to questions using phrases with appropriate rate of speech when given a verbal prompt to slow his rate in 3/5 opportunities.

(Exhibit 4, pg. 23)
10. On March 31, 2016, DHS sent the Petitioner and [REDACTED] notices, advising them that the request for services was denied. (Exhibit 4, pgs. 31-36)
11. The Petitioner's mother, on Petitioner's behalf, filed a request for hearing that was received by the Division of Hearings and Appeals on May 10, 2016. (Exhibit 1)

12. [REDACTED] revised its goals for July 1, 2016 through December 31, 2016. That treatment plan indicated that the Petitioner had mastered answering offers of items and activities with a “yes” or “no”; that he had mastered answering questions such as, “What do you have?” and “What do I have?”. (Exhibit 2)
13. The updated treatment plan has continued goals relating to conversation skills, play skills/peer integration, receptively and expressively labeling colors and sizes, and responding to questions such as, “Which one do you want?”, “Do you want (object)/(activity) or (object)/(activity)”, “What do you see?”, identifying people, identifying objects and responding appropriately in “circle time.” (Id.)

DISCUSSION

The Department of Health Services sometimes requires prior authorization to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

Speech and language therapy is a Medicaid covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, § DHS107.18(2).

Wis. Admin. Code Wis. Admin. Code § DHS107.18(1)(a) defines covered speech and language pathology services as those services that are, “medically necessary, diagnostic, screening, preventive or corrective speech and language pathology services prescribed by a physician and provided by a certified speech and language pathologist or under the direct, immediate on-premises supervision of a certified speech and language pathologist.”

Wis. Admin. Code Wis. Admin. Code § DHS107.18(1)(c) lists the speech procedure treatments that must be performed by a certified speech and language pathologist or under the direct, immediate, on-premises supervision of a certified speech and language pathologist:

1. Expressive language:
 - a. Articulation;
 - b. Fluency;
 - c. Voice;
 - d. Language structure, including phonology, morphology, and syntax;
 - e. Language content, including range of abstraction in meanings and cognitive skills; and
 - f. Language functions, including verbal, non-verbal and written communication;
2. Receptive language:
 - a. Auditory processing — attention span, acuity or perception, recognition, discrimination, memory, sequencing and comprehension; and
 - b. Visual processing — attention span, acuity or perception, recognition, discrimination, memory, sequencing and comprehension;
3. Pre-speech skills:
 - a. Oral and peri-oral structure;
 - b. Vegetative function of the oral motor skills; and
 - c. Volitional oral motor skills; and Hearing/auditory training;

4. Hearing screening and referral;
 - a. Auditory training;
 - b. Lip reading;
 - c. Hearing aid orientation; and
 - d. Non-verbal communication.

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. **Is not duplicative with respect to other services being provided to the recipient;**
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Emphasis added, Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence that the requested level of therapy meets the approval criteria.

It is the position of DHS that because Petitioner receives intensive in-home therapy services through [REDACTED], there is no need for the requested therapy, as there are other available services that can be effectively and appropriately used. This generic standard for service approval is sometimes “short-handed” to a test of “duplication” of services. However, exact duplication of goals is not what is required by this standard. Rather, this reviewing standard causes the reader to consider whether, if the patient is taking advantage of available, appropriate services offered in other venues, the requested private therapy is still needed.

The goals of the [REDACTED] therapy, as stated at the time the February 2016 prior authorization request were to enable the Petitioner to interact and communicate effectively with others by responding appropriately to questions and adhering to social conventions, whether during interaction with adults, during play with peers or “circle time”. This included goals related to imitation of speech and volume. The goals of the requested private therapy were ultimately the same, though not necessarily stated using the same terms. As such, it is found that DHS correctly denied the February 2016 prior authorization request as being duplicative of the intensive in-home services received by the Petitioner from [REDACTED].

[REDACTED] has since revised its goals in an attempt to avoid duplication with the private therapist. In addition, the Petitioner’s mother testified that she pursued private therapy, because the Petitioner has serious issues with articulation and intelligibility and the [REDACTED] therapist is not trained to deal with those issues. However, the goals as written by [REDACTED] do not necessarily deal with articulation, but instead relate to general communication goals which are still duplicative of the [REDACTED] goals. As such, it is difficult to conclude the Petitioner requires private therapy, in addition to the 36 hours per week of therapy he receives from [REDACTED].

Petitioner’s mother should note, that if [REDACTED] can more clearly state goals related to articulation and intelligibility and, if it can clearly differentiate those goals from the treatment provide by [REDACTED], it can, at any time, submit a new prior authorization request for services.

CONCLUSIONS OF LAW

DHS correctly denied the February 2016 request from [REDACTED] to provide speech therapy to the Petitioner.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

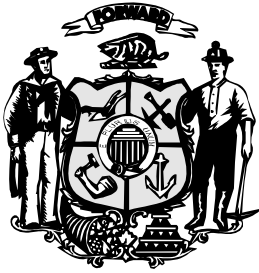
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this _____ day of July, 2016

\s _____
Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 18, 2016.

Division of Health Care Access and Accountability